

## **REMARKS**

### **REVIEW**

The original application set forth claims 1-12 of which claims 1,5, and 8 were independent claims. The current application sets forth claims 1-7 of which claims 1 and 5 are independent claims. Presently, no claims have been indicated as allowed in view of the prior art. Claims 1-7 stand collectively rejected under 35 U.S.C. § 103(a) as being unpatentable over Amberg et al. (U.S. Patent No. 5,091,543) in view of Rickel et al. (U.S. Patent No. 5,854,924).

### **35 U.S.C. § 103(a) REJECTIONS**

The Examiner has rejected Claims 1-7 under 35 U.S.C. § 103(a) as being unpatentable over Amberg et al. in view of Rickel et al. Applicant respectfully traverses such ground of rejection with the above amendments and the following remarks. By relying on rejection grounds under 35 U.S.C. § 103(a) for alleged obviousness, and by various statements throughout the detailed Office Action, the Examiner readily acknowledges certain important deficiencies of the base reference Amberg et al. which renders such reference inadequate for serving by itself as a rejection basis for any of the present pending claims.

With respect to independent claims 1 and 5, as presently amended, it is respectfully submitted that Amberg et al. cannot at law serve as an obviating reference under 35 U.S.C. § 103(a). Further, as the proposed secondary reference, Rickel et al., fails to overcome the faults of the base reference, it is respectfully submitted that all claims are presently in condition for allowance.

It is respectfully submitted that the proposed combination of Amberg et al. and Rickel et al. is improper as the proposed combination fails to teach the present invention. Admittedly, the differences are not easy to note unless careful attention is paid to the semantics of the claim language, however, the claims of the present invention as presently amended are directed to a system and method for testing a process that downloads and installs customer ordered software onto a target computer. In other words, the present invention is an iterative process that determines the proper ordering and sequence of downloading and installing custom-ordered software onto a target computer in such a way as to determine the best sequence (i.e., with the fewest -- preferably none -- errors or problems) for downloading a specific listing of software.

The proposed base reference, Amberg et al. teaches a method for installing and/or testing the software on a custom-ordered platform. The purpose of the present invention is not the installation or testing of the software itself, but instead the use of a simulation computer to determine the best process for downloading and installing user-specified software packages onto a target computer with the fewest errors. It is inherent in the proposed combination of references that the successful downloading and installation of such software has already occurred. As a result, the proposed process may indeed be described as “analogous art,” however the present invention is wholly different from the proposed combination.

It is therefore submitted that the use of Amberg et al. as a basis for the 35 U.S.C. § 103(a) rejection of claims 1-7 is improper as the proposed combination of references teaches away from the present invention. As such, it is believed that independent claims 1 and 5 are in condition for allowance. Furthermore, claims 2-4 depend from and further limit claim 1 and are therefore

allowable on the same basis as claim 1. Similarly, claims 6 and 7 depend from and further limit claim 5 and are therefore allowable on the same basis as claim 5. Withdrawal of the current grounds of the 35 U.S.C. § 103(a) rejection of claims 1-7 is respectfully requested and earnestly solicited.

#### **CITED RELEVANT PRIOR ART**

It is not believed that any of the prior art cited either by the Examiner or the Applicant, alone or in combination either with each other or other cited prior art teaches, discloses, suggests or makes obvious the claimed features of the present invention.

#### **CONCLUSION**

In view of Applicant's earlier amendments and the foregoing comments, Applicants respectfully request withdrawal of the current grounds of rejection and the issuance of a formal Notice of Allowance. The Examiner is invited to telephone the undersigned at his convenience should only minor issues remain after consideration of this amendment in order to permit early resolution of the same.

It is believed that no fee is due with the present amendment, however, if it is determined that a fee is due, the Commissioner is hereby authorized to charge any fee required to Deposit Account No. 50-0686, in the name of Lanier Ford Shaver & Payne P.C.

Respectfully submitted,

10/6/04  
Date

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope address to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on **October 6, 2004**.

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Charles R. Ducker, Jr.  
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